

AMENDED IN SENATE APRIL 21, 2003

SENATE BILL

No. 457

Introduced by Senators McPherson and Margett

February 20, 2003

An act to repeal Section 5814.5 of, and to repeal and add Section 5814 of, the Labor Code, relating to workers' compensation.

LEGISLATIVE COUNSEL'S DIGEST

SB 457, as amended, McPherson. Workers' compensation: benefit delays.

Existing law provides that when the payment of workers' compensation benefits has been unreasonably delayed or refused, the amount of the compensation shall be increased by 10%. Existing law provides that this delay or refusal to pay compensation constitutes good cause to rescind, alter, or amend the order, decision, or award.

This bill would, instead, ~~provide that when payment of compensation has been unreasonably delayed or refused, the amount of compensation may be increased up to 25%, or \$500, whichever is greater~~ *require that the portion of the order, decision, or award that was unreasonably delayed or refused be increased by 25% or \$500, whichever is greater, but the aggregate amount of these penalties shall be no more than \$5,000 per injury claim.* This bill would require, as a precondition to a claim for penalties, that the employee give the employer written notice, as specified, and would prohibit any further penalty from being assessed if the employer pays a self-imposed increase of 10% along with any other self-imposed benefit increases. This bill would also provide that the Workers' Compensation Appeals Board has no jurisdiction to hear a claim for a penalty, as defined, unless the employee

files a claim within one year from the date of the alleged unreasonable delay or refusal to pay benefits.

Existing law requires the board, when the payment of compensation has been unreasonably delayed or refused under specified circumstances, to award reasonable attorneys' fees incurred in enforcing the payment of the workers' compensation award.

This bill would repeal this provision.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 5814 of the Labor Code is repealed.
2 SEC. 2. Section 5814 is added to the Labor Code, to read:
3 5814. (a) When payment of compensation has been
4 unreasonably delayed or refused, either prior to or subsequent to
5 the issuance of an award, ~~the amount of the benefit that is~~
6 ~~unreasonably delayed or refused may be increased up to 25 percent~~
7 ~~or up to five hundred dollars (\$500), whichever is greater. The~~
8 ~~appeals board shall use its discretion in order to accomplish a fair~~
9 ~~balance and substantial justice between the parties; that portion of~~
10 ~~the order, decision, or award that was unreasonably delayed or~~
11 ~~refused shall be increased by 25 percent or five hundred dollars~~
12 ~~(\$500), whichever is greater; but the aggregate amount of these~~
13 ~~penalties shall be no more than five thousand dollars (\$5,000) per~~
14 ~~injury claim.~~
15 (b) As a precondition to a claim for penalties under this section,
16 the employee is required to give written notice to the employer of
17 the claimed unreasonable delay or refusal of benefits. If, within 20
18 days from the date of service of this notice, the employer pays a
19 self-imposed increase of 10 percent of the amount of
20 compensation delayed or refused, in addition to any other
21 self-imposed increases due under this division, there shall be no
22 further penalty allowed under this section. If the employer disputes
23 whether the delay or refusal is unreasonable, and the judge
24 determines that the delay or refusal violates this section, the judge
25 shall award the penalty prescribed by subdivision (a). In
26 determining whether the delay or refusal is unreasonable, the
27 judge shall consider only the specific facts resulting in the delay

1 or refusal of the specific benefit that is the subject of the request
2 for penalties.

3 (c) The appeals board shall have no jurisdiction to hear a claim
4 for a penalty under subdivision (a), unless the employee files a
5 claim for a penalty within one year from the date of the alleged
6 unreasonable delay or refusal to pay benefits. Upon approval of a
7 compromise and release by the appeals board, it shall be
8 conclusively presumed that any existing or potential penalties
9 have been resolved, unless expressly excluded by the terms of the
10 compromise and release.

11 (d) When a penalty is awarded under subdivision (a), the
12 appeals board may allow a credit for any self-imposed increase
13 under subdivision (d) of Section 4650 or subdivision (b), in order
14 to accomplish a fair balance and substantial justice between the
15 parties.

16 (e) *Commencing January 1, 2004, this section shall apply to all*
17 *injury claims and to any penalty claim for which there has not been*
18 *a final determination. The five thousand dollar (\$5,000) per claim*
19 *limit on penalties specified in subdivision (a) shall apply to all*
20 *outstanding awards for continuing penalty payments when the*
21 *total penalty paid, as of January 1, 2004, has exceeded five*
22 *thousand dollars (\$5,000).*

23 (f) Nothing in this section shall be deemed to create a civil cause
24 of action.

25 SEC. 3. Section 5814.5 of the Labor Code is repealed.

